

APPENDIX D2

Granted Requests for Changes to Certification that Meet the Interference Criteria

Call Sign	Facility ID No.	Community	State	Current NTSC Channel	Current DTV Channel	Post Transition Channel	File No.
KAKM	804	ANCHORAGE	AK	7	8	8	BLEDT-20050915APL
WFIQ	715	FLORENCE	AL	36	22	22	BLEDT-20060718ACG
WHIQ	713	HUNTSVILLE	AL	25	24	24	BLEDT-20060927ALU
WAIQ	706	MONTGOMERY	AL	26	27	27	BLEDT-20060706ACK
KKYK	86534	CAMDEN	AR	49		49	BPCDT-20050224ABE
KDOC	24518	ANAHEIM	CA	56	32	32	BMPCDT-20040323ATA
KAEF	8263	ARCATA	CA	23	22	22	BPCDT-20070914AAG
KVCR	58795	SAN BERNARDINO	CA	24	26	26	BLEDT - 20070904AIC
KPXC	68695	DENVER	CO	59	43	43	BPCDT-19990923AAM
KRMA	14040	DENVER	CO	6	18	18	BMPEdT-20061205AAG
KFCT	125	FORT COLLINS	CO	22	21	21	BMPCDT-20050916ACG
WINK	22093	FORT MYERS	FL	11	9	9	BLCDT-20060531ADP
WCWJ	29712	JACKSONVILLE	FL	17	34	34	BLCDT-20060630AFM
WSRE	17611	PENSACOLA	FL	23	31	31	BLEDT-20060621AAS
WGSA	69446	BAXLEY	GA	34	35	35	BMPCDT-20060717AAC
WPGA	54728	PERRY	GA	58	32	32	BMPCDT-20041203ADW

KFVE	34445	HONOLULU	HI	5	23	23	BDSTA- 20041012AKF
KHNL	34867	HONOLULU	HI	13	35	35	BLCDT- 20070220ABH
KQIN	5471	DAVENPORT	IA	36	34	34	BMPEdT- 20070809AAX
KTIN	29100	FORT DODGE	IA	21	25	25	BMPEdT- 20060911AAJ
KYIN	29086	MASON CITY	IA	24	18	18	BMPEdT- 20060714ABL
KSIN	29096	SIOUX CITY	IA	27	28	28	BLEdT- 20050726AMC
WSBT	73983	SOUTH BEND	IN	22	30	22	BMPCDT- 20050613AFU
KSWK	60683	LAKIN	KS	3	8	8	BLEdT- 20050203ADS
WKLE	34207	LEXINGTON	KY	46	42	42	BLEdT- 20060926AJQ
KALB	51598	ALEXANDRIA	LA	5	35	35	BPCDT- 19991025ACQ
WWLP	6868	SPRINGFIELD	MA	22	11	11	BLCDT- 20060619AAS
KDLH	4691	DULUTH	MN	3	33	33	BMPCDT- 20060519AAE
KOZJ	51101	JOPLIN	MO	26	25	25	BLEdT- 20060620ABP
KYTV	36003	SPRINGFIELD	MO	3	44	44	BLCDT- 20020213AAA
KUSM	43567	BOZEMAN	MT	9	8	8	BLEdT- 20050926ALC
WSFX	72871	WILMINGTON	NC	26	30	30	BMPCDT- 20060630ADE
KRWG	55516	LAS CRUCES	NM	22	23	23	BMPEdT- 20041104AXJ
WNLO	71905	BUFFALO	NY	23	32	32	BLCDT- 20070320AAV
WSKA	78908	CORNING	NY	30		30	BLEdT- 20060705ABL
WBNX	72958	AKRON	OH	55	30	30	BLCDT- 20070430AXX

WCET	65666	CINCINNATI	OH	48	34	34	BLEDT-20061031AAR
WLIO	37503	LIMA	OH	35	8	8	BMPCDT-20060517ABE
WQCW	65130	PORTSMOUTH	OH	30	17	17	BLCDDT-20060630AFJ
WFMZ	39884	ALLENTOWN	PA	69	46	46	BLCDDT-20060621AAU
WITF	73083	HARRISBURG	PA	33	36	36	BLEDT-20000922AHE
WMTJ	2174	FAJARDO	PR	40	16	16	BMPEDT-20070629AEN
WTCV	28954	SAN JUAN	PR	18	32	32	BPCDDT-20070125AAX
WRLK	61013	COLUMBIA	SC	35	32	32	BMLEDT-20040826AAL
WSMV	41232	NASHVILLE	TN	4	10	10	BLCDDT-20021029AAV
KXAN	35920	AUSTIN	TX	36	21	21	BLCDDT-20050630AAG
KTLM	62354	RIO GRANDE CITY	TX	40	20	20	BPCDDT-19991026ACA
KBYU	6823	PROVO	UT	11	44	44	BLEDT-20020813ABC
WDBJ	71329	ROANOKE	VA	7	18	18	BLCDDT-20020502AAP
WETK	69944	BURLINGTON	VT	33	32	32	BLEDT-20061011ADW
WVNY	11259	BURLINGTON	VT	22	13	13	BLCDDT-20061113ABH
WVTB	69940	ST. JOHNSBURY	VT	20	18	18	BPEDT-20071026ABW
WVTA	69943	WINDSOR	VT	41	24	24	BMPEDT-20060306BRA
WHLA	18780	LA CROSSE	WI	31	30	30	BMLEDT-20041013AAL
WHRM	73036	WAUSAU	WI	20	24	24	BLEDT-20051014AAW

APPENDIX D3
Granted Requests for Modified Coverage Area

Call Sign	Facility ID No.	Community	State	Current NTSC Channel	Current DTV Channel	Post Transition Channel
WVTM	74173	BIRMINGHAM	AL	13	52	13
KETS	2770	LITTLE ROCK	AR	2	5	7
KNAZ	24749	FLAGSTAFF	AZ	2	22	2
KCET	13058	LOS ANGELES	CA	28	59	28
KXTV	25048	SACRAMENTO	CA	10	61	10
WJLA	1051	WASHINGTON	DC	7	39	7
WUSA	65593	WASHINGTON	DC	9	34	9
WHYY	72338	WILMINGTON	DE	12	55	12
WTSP	11290	ST. PETERSBURG	FL	10	24	10
WPTV	59443	WEST PALM BEACH	FL	5	55	12
WGTV	23948	ATHENS	GA	8	12	8
KWWL	593	WATERLOO	IA	7	55	7
KTVB	34858	BOISE	ID	7	26	7
WNIN	67802	EVANSVILLE	IN	9	12	9
WBKO	4692	BOWLING GREEN	KY	13	33	13
WHAS	32327	LOUISVILLE	KY	11	55	11
WLBZ	39644	BANGOR	ME	2	25	2
WBKP	76001	CALUMET	MI	5	11	5
WILX	6863	ONONDAGA	MI	10	57	10
WPBN	21253	TRAVERSE CITY	MI	7	50	7
WDIO	71338	DULUTH	MN	10	43	10
KEYC	68853	MANKATO	MN	12	38	12
WJTV	48667	JACKSON	MS	12	52	12
WTOK	4686	MERIDIAN	MS	11	49	11
KOBF	35321	FARMINGTON	NM	12	17	12
WWNY	68851	CARTHAGE	NY	7	35	7
WHEC	70041	ROCHESTER	NY	10	58	10
WTVG	74150	TOLEDO	OH	13	19	13
KOED	66195	TULSA	OK	11	38	11
WGAL	53930	LANCASTER	PA	8	58	8
WSUR	19776	PONCE	PR	9	43	9
WJAR	50780	PROVIDENCE	RI	10	51	51

WBTW	66407	FLORENCE	SC	13	56	13
WHNS	72300	GREENVILLE	SC	21	57	21
WYFF	53905	GREENVILLE	SC	4	59	36
KTTM	28501	HURON	SD	12	22	12
WMC	19184	MEMPHIS	TN	5	52	5
KCPQ	33894	TACOMA	WA	13	18	13
KSTW	23428	TACOMA	WA	11	36	11
WDTV	70592	WESTON	WV	5	6	5

APPENDIX D4

Granted Requests for Alternative Channel Assignments

Call Sign	Facility ID No.	Community	State	Current NTSC Channel	Current DTV Channel	Post Transition Channel
KTVF	49621	FAIRBANKS	AK	11	26	26
KIDA	81570	SUN VALLEY	ID	5		5
KSCW	72348	WICHITA	KS	33	31	19
WUFX	84253	VICKSBURG	MS	35		41
WTLW	1222	LIMA	OH	44	47	44
KIVV	34348	LEAD	SD	5	29	5
WKPT	27504	KINGSPORT	TN	19	27	27
KVAW	32621	EAGLE PASS	TX	16	18	24

APPENDIX D5

Stations Requesting Changes that Should be Requested in an Application

(Stations Whose Post-Transition Channel is Different from Their Pre-Transition Channel)

Call Sign	Facility ID No.	Community	State	Current NTSC Channel	Current DTV Channel	Post Transition Channel
KBRR	55370	THIEF RIVER FALLS	MN	10	57	10
KBSH	66415	HAYS	KS	7	20	7
KCBS	9628	LOS ANGELES	CA	2	60	43
KDSE	53329	DICKINSON	ND	9	20	9
KETZ	92872	EL DORADO	AR		12	10
KFME	53321	FARGO	ND	13	23	13
KFVS	592	CAPE GIRARDEAU	MO	12	57	12
KGIN	7894	GRAND ISLAND	NE	11	32	11
KHAS	48003	HASTINGS	NE	5	21	5
KNOP	49273	NORTH PLATTE	NE	2	22	2
KNRR	55362	PEMBINA	ND	12	15	12
KOLN	7890	LINCOLN	NE	10	25	10
KPNE	47973	NORTH PLATTE	NE	9	16	9
KRMJ	14042	GRAND JUNCTION	CO	18	17	18
KTCI	68597	ST. PAUL	MN	17	16	26
KTSC	69170	PUEBLO	CO	8	26	8
KUAC	69315	FAIRBANKS	AK	9	24	9
KUHT	69269	HOUSTON	TX	8	9	8
KUPK	65535	GARDEN CITY	KS	13	18	13
KWCH	66413	HUTCHINSON	KS	12	19	12
KWTX	35903	WACO	TX	10	53	10
WAKA	701	SELMA	AL	8	55	42
WBKO	4692	BOWLING GREEN	KY	13	33	13
WCAX	46728	BURLINGTON	VT	3	53	22
WDSE	17726	DULUTH	MN	8	38	8
WEAU	7893	EAU CLAIRE	WI	13	39	13
WEDU	21808	TAMPA	FL	3	54	13
WIBW	63160	TOPEKA	KS	13	44	13
WJHG	73136	PANAMA CITY	FL	7	8	7
WLEF	63046	PARK FALLS	WI	36	47	36
WLVT	36989	ALLENTOWN	PA	39	62	39

WNPT	41398	NASHVILLE	TN	8	46	8
WPTD	25067	DAYTON	OH	16	58	16
WPVI	8616	PHILADELPHIA	PA	6	64	6
WRDW	73937	AUGUSTA	GA	12	31	12
WSAW	6867	WAUSAU	WI	7	40	7
WSKY	76324	MANTEO	NC	4	4	9
WTAT	416	CHARLESTON	SC	24	40	24
WTVM	595	COLUMBUS	GA	9	47	9
WTVZ	40759	NORFOLK	VA	33	38	33
WVTV	74174	MILWAUKEE	WI	18	61	18

(Stations Whose Post-Transition Channel is the Same as Their Pre-Transition Channel)

Call Sign	Facility ID No.	Community	State	Current NTSC Channel	Current DTV Channel	Post Transition Channel
KBTB	61214	PORT ARTHUR	TX	4	40	40
KFNR	21612	RAWLINS	WY	11	9	9
KGWL	63162	LANDER	WY	5	7	7
KMID	35131	MIDLAND	TX	2	26	26
KQTV	20427	ST. JOSEPH	MO	2	53	7
KTWO	18286	CASPER	WY	2	17	17
KUPN	63158	STERLING	CO	3	23	23
KVEA	19783	CORONA	CA	52	39	39
WBBJ	65204	JACKSON	TN	7	43	43
WFXV	43424	UTICA	NY	33	27	27
WHKY	65919	HICKORY	NC	14	40	40
WMYO	34167	SALEM	IN	58	51	51

APPENDIX E

Supplemental Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (“RFA”)¹ an Initial Regulatory Flexibility Analysis (“IRFA”) was incorporated in the *Seventh Further Notice of Proposed Rulemaking* (“*Seventh Further Notice*”) in MB Docket 87-268.² The Commission sought written public comment on the proposals in the *Seventh Further Notice*, including comment on the IRFA. In addition, a Final Regulatory Flexibility Analysis (“FRFA”) was incorporated in the *Seventh Report and Order* in MB Docket 87-268.³ This present Supplemental Final Regulatory Flexibility Analysis (“Supplemental FRFA”) on the *Memorandum Opinion and Order on Reconsideration* conforms to the RFA.⁴

A. Need for, and Objectives of, the Order on Reconsideration

2. The Commission initiated this proceeding to establish a final DTV Table of Allotments with the *Seventh Further Notice*, which proposed a final, post-transition DTV channel for each eligible⁵ full power television broadcast station. After reviewing comments, the Commission adopted a final DTV Table in the *Seventh Report and Order*. The Commission received approximately 124 petitions for reconsideration of the *Seventh Report and Order* requesting changes to the Table and/or to the station operating parameters on Appendix B for more than 200 stations. This *Memorandum Opinion and Order on Reconsideration* responds to these petitions and, in response to some of the petitions, modifies the DTV Table and/or Appendix B adopted in the *Seventh Report and Order*. This Supplemental FRFA is associated with the *Memorandum Opinion and Order on Reconsideration* and discusses the changes made to the DTV Table and Appendix B in response to the petitions for reconsideration.

3. The final post-transition DTV Table, as modified herein on reconsideration, finalizes the channel and facilities necessary to complete the digital transition for full power television stations, including full power commercial and noncommercial broadcast television stations. The changes we made to the DTV Table and Appendix B in response to the petitions will help promote overall spectrum efficiency and ensure the best possible service to the public, including service to local communities. For example, for 55 stations, we made changes to Appendix B station operating parameters to be consistent with current authorizations for these stations. For 8 stations, we granted channel changes requested by the station, which will assist those stations in making the transition to digital service and in continuing to serve their communities. For 40 stations, we modified the station’s post-transition coverage area to help

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 - 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (“SBREFA”), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

² *Seventh Further Notice of Proposed Rule Making, In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MB Docket No. 87-268, 21 FCC Rcd 12100 (2006) (“*Seventh Further Notice*”).

³ See *Seventh Report and Order, In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MB Docket No. 87-268, 22 FCC Rcd 15581 (2007) (“*Seventh Report and Order*”).

⁴ See 5 U.S.C. § 604.

⁵ Only Commission licensees and permittees were eligible to participate in the channel election process to select a final DTV channel. See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 1830, ¶ 66.

the station better serve their community post-transition, and for 6 stations we granted minor changes to Appendix B station parameters to reflect correct coordinates for the station. These and other changes to the final DTV Table and Appendix B made herein will assist these broadcasters in transitioning to digital service.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

4. There were no comments filed that specifically addressed the FRFA in this proceeding.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

5. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein.⁶ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”⁷ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁹ The rules of this *MO&O* will primarily affect full power television stations, as opposed to low power television stations and television translator stations. A description of such small entities, as well as an estimate of the number of such small entities, is provided below.

6. *Television Broadcasting.* The rules and policies adopted in this *MO&O* apply to television broadcast licensees and potential licensees of television service. The SBA defines a television broadcast station as a small business if such station has no more than \$13.0 million in annual receipts.¹⁰ Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.”¹¹ The Commission has estimated the number of licensed commercial television stations to

⁶ 5 U.S.C. § 603(b)(3).

⁷ *Id.* § 601(6).

⁸ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

⁹ 15 U.S.C. § 632. Application of the statutory criteria of dominance in its field of operation and independence are sometimes difficult to apply in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

¹⁰ See 13 C.F.R. § 121.201, NAICS Code 515120.

¹¹ *Id.* This category description continues, “These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.” Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

be 1,376.¹² According to Commission staff review of the BIA Financial Network, MAPro Television Database ("BIA") on March 30, 2007, about 986 of an estimated 1,374 commercial television stations¹³ (or about 72 percent) have revenues of \$13.0 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed NCE television stations to be 380.¹⁴ We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations¹⁵ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

7. In addition, an element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of "small business" is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

8. *Class A TV, LPTV, and TV translator stations.* The rules and policies adopted in this *MO&O* do not directly affect low power television stations, as the DTV Table adopted in the *MO&O* finalizes post-transition digital channels only for full power television stations. Nonetheless, as discussed in Section E, *infra*, low power television stations will also eventually transition from analog to digital technology and may be indirectly affected by the channel allotment decisions herein. The broadcast stations indirectly affected include licensees of Class A TV stations,¹⁶ low power television (LPTV) stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than \$13.0 million in annual receipts.¹⁷ Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, and 4,518 licensed TV translators.¹⁸ Given the nature of these services, we will presume that all

¹² See News Release, "Broadcast Station Totals as of December 31, 2006," 2007 WL 221575 (dated Jan. 26, 2007) ("*Broadcast Station Totals*"); also available at <http://www.fcc.gov/mb/>.

¹³ We recognize that this total differs slightly from that contained in *Broadcast Station Totals*, *supra* note 12; however, we are using BIA's estimate for purposes of this revenue comparison.

¹⁴ See *Broadcast Station Totals*, *supra* note 12.

¹⁵ "[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both." 13 C.F.R. § 121.103(a)(1).

¹⁶ In general, low power television stations are secondary to full power television stations and must accept interference from full power stations. The Community Broadcasters Protection Act, and the Commission's rules implementing that statute, give certain low power television (LPTV) stations, known as Class A stations, some limited protection from interference by full-service stations. See Community Broadcasters Protection Act of 1999, Pub. L. No. 106-113, 113 Stat. Appendix I at pp. 1501A-594 – 1501A-598 (1999), codified at 47 U.S.C. § 336(f). See also 47 C.F.R. §§ 73.6000-6027.

¹⁷ See 13 C.F.R. § 121.201, NAICS Code 515120.

¹⁸ See *Broadcast Station Totals*, *supra* note 12.

of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than \$13.0 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

D. Description of Projected Reporting, Recordkeeping and other Compliance Requirements

9. The rules adopted in this *MO&O* involve no changes to reporting, recordkeeping, or other compliance requirements beyond what is already required under the current regulations.

E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

10. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹⁹

11. As noted in paragraph 3 of this Supplemental FRFA, we made a number of changes to the final DTV Table and Appendix B in the *Memorandum Opinion and Order on Reconsideration* in response to petitions for reconsideration filed on behalf of stations. The changes we made will help promote overall spectrum efficiency and ensure the best possible service to the public, including service to local communities. In general, we accommodated the requests made by petitioners to the extent possible consistent with the interference and other standards outlined in the *Seventh Further Notice* and the *Seventh Report and Order* in this proceeding. Making changes wherever possible in response to station requests and consistent with previous standards advances the Commission's overall goal of facilitating the digital transition. An alternative, which we did not pursue, would have been to consider petitions without reference to the interference and other standards set forth in the *Seventh Further Notice* and the *Seventh Report and Order*. We rejected that alternative on the ground that station requests should be treated consistently to the extent possible, so that stations that requested relief earlier in the proceeding, in a comment filed in response to the *Seventh Further Notice*, do not get treated differently from those that requested relief later, in a petition for reconsideration filed in response to the *Seventh Report and Order*.

12. The changes to the final post-transition DTV Table adopted in the *Memorandum Opinion and Order on Reconsideration* provides stations that filed petitions for reconsideration – large and small alike – with the best channels and facilities possible for accomplishing the digital transition. Large and small broadcasters alike benefited from our approach of accommodating petitioner requests where possible, which was taken in an effort to expedite finalization of the DTV Table and Appendix B so that stations can complete construction of their post-transition facilities by the statutory deadline for the DTV transition. Where petitioners made specific requests for changes to the proposals in the *Seventh Further*

¹⁹ 5 U.S.C. § 603(c)(1)-(c)(4).

Notice, requests that provided for an alternative service area for the station or parameters that differed from those adopted by the Commission, those requests were granted to the extent possible consistent with the standards of the *Seventh Further Notice* and the *Seventh Report and Order* and, in particular, with the applicable interference standards. This process has been open and transparent, and has provided consistent treatment for large and small broadcasters.

13. The final DTV Table adopted herein does not provide for channels for low power television stations, and we received no petitions for reconsideration from low power stations. The Commission will address the digital transition for low power television ("LPTV") stations in a separate proceeding. The statutory transition deadline established by Congress in 2006 – February 17, 2009 – applies only to full-power stations.²⁰ One of the Commission's goals in this proceeding is to permit full power stations to finalize their post-transition facilities by this rapidly approaching deadline. The Commission previously determined that it has discretion under 47 U.S.C. § 336(f)(4) to set the date by which analog operations of stations in the low power and translator service must cease.²¹ The Commission has stated that the intent is to ensure that low power and translator stations not be required to prematurely convert to digital operation in a manner that could disrupt their analog service or, more importantly, that might cause them to cease operation.²² The Commission decided not to establish a fixed termination date for the low power digital television transition until it resolved the issues concerning the transition of full-power television stations.²³ The Commission has recognized that low power television stations are a valuable component of the nation's television system and has stated its intention to facilitate, wherever possible, the digital transition of these stations.²⁴

F. Report to Congress

14. The Commission will send a copy of this *MO&O*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.²⁵ In addition, the Commission will send a copy of this *MO&O*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *MO&O* and Supplemental FRFA (or summaries thereof) will also be published in the Federal Register.²⁶

²⁰ See Digital Television and Public Safety Act of 2005, which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (codified at 47 U.S.C. §§ 309(j)(14) and 337(e)).

²¹ *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Report and Order, 19 FCC Rcd 19331, 19336 ¶ 12 (2004) ("LPTV DTV Report and Order").

²² *Id.* at 19337 ¶ 14.

²³ *Id.* at 19336 ¶ 19.

²⁴ *Id.* at 19332, ¶ 1.

²⁵ See 5 U.S.C. § 801(a)(1)(A).

²⁶ See *id.* § 604(b).

APPENDIX F**Eighth Report and Order****List of Comments and Replies**

1. Richland Reserve, LLC
2. Fox Television Stations of Philadelphia, Inc.
3. Maryland Public Broadcasting Commission d/b/a Maryland Public Television
4. Saga Quad States Communications
5. Gray Television Licensee, Inc.
6. Gilmore Broadcasting Corp.
7. Idaho Independent Television, Inc.
8. The Board of Trustees of The University of Alabama
9. CBS Corporation
10. Tribune Broadcasting Co.

APPENDIX G

Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended ("RFA")¹ an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the *Eighth Further Notice of Proposed Rulemaking* ("*Eighth Further Notice*").² The Commission sought written public comment on the proposals in the *Eighth Further Notice*, including comment on the IRFA. The Commission received no comments on the IRFA. This present Final Regulatory Flexibility Analysis ("FRFA") accompanying the *Eighth Report and Order* ("*Eighth R&O*") conforms to the RFA.³

A. Need for, and Objectives of, the Report and Order

2. This *Eighth R&O* addresses comments filed by licensees and permittees in response to the *Eighth Further Notice*. The *Eighth Further Notice* proposed modifications to the new post-transition DTV Table of Allotments and Appendix B ("DTV Table"). It provided three new full power permittees and nine existing full power licensees and permittees with channels and parameters for digital broadcast operations after the DTV transition. Changes to the new post-transition DTV Table affect full power commercial and noncommercial broadcast television stations as the new DTV Table provides post-transition channels for all eligible full power stations⁴ and changes to the Table may have interference or other implications for other broadcasters in the Table.

3. The Commission announced in the *Seventh Further Notice* that, to the extent possible, it would accommodate future new permittees in the new post-transition DTV Table, but that it would provide an opportunity for public comment before doing so.⁵ Three new construction permits were issued to permittees too late to be offered for comment in the Public Notice revising the *Seventh Further Notice*,⁶ but it was found that these permittees could be accommodated in the new DTV Table without causing impermissible interference. Having provided the requisite notice and comment periods, in the *Eighth R&O* we have now granted the specific facilities and parameters we proposed for these permittees, including the request for a different post-transition digital channel in a comment filed by one of the permittees. Furthermore, ten⁷ existing licensees and permittees made late-filed requests to the *Seventh*

¹ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 - 612., has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 ("SBREFA"), Pub. L. No. 104-121, Title II, 110 Stat. 847 (1996).

² *Eighth Further Notice of Proposed Rule Making, In the Matter of Advanced Television Systems and Their Impact Upon the Existing Television Broadcast Service*, MB Docket No. 87-268, 22 FCC Rcd 15581 (2007) ("*Eighth Further Notice*").

³ See 5 U.S.C. § 604.

⁴ Only Commission licensees and permittees were eligible to participate in the channel election process to select a final DTV channel. See *Second DTV Periodic Report and Order*, 19 FCC Rcd at 1830, ¶ 66.

⁵ *Seventh Further Notice*, 21 FCC Rcd at 12118, ¶ 53.

⁶ Public Notice, "Revisions to Proposed New DTV Table of Allotments, Tentative Channel Designations To Be Added to the DTV Table of Allotments Proposed in the *Seventh Further Notice of Proposed Rule Making* in MB Docket No. 87-268," DA 07-20 (MB rel. Jan. 8, 2007), 72 FR 2485 (Jan. 19, 2007) ("*New Permittees PN*").

⁷ Initially, ten licensees or permittees requested changes and were under consideration, however one licensee, Fox Television Stations of Philadelphia, Inc., has withdrawn its request to adjust its Appendix B parameters and (continued....)

Further Notice for modifications to the new DTV Table, and we found it appropriate to provide a full opportunity for comment with respect these entities in the *Eighth Further Notice*. With the issuance of the instant *Eighth R&O*, we have now considered any comments filed in connection with these proposals. We grant the request of one station to modify Appendix B to reflect its authorized facilities, we grant the request of another station seeking to modify its Appendix B facilities to more closely replicate its analog Grade B contour, we grant alternative post-transition digital channel assignments to five stations, and we grant the request to modify the technical parameters of two stations whose transmission facilities were destroyed by Hurricane Katrina.

4. We believe these modifications to the new post-transition DTV Table support the goals set forth for the channel election process.⁸ By these modifications, the new permittees are provided with channels for DTV operations after the transition. Where adjustments bring the Table into line with the facilities or service areas of existing licensees or permittees, they recognize industry expectations and respect investments already made. These adjustments also move the overall post-transition DTV Table more quickly towards finality without sacrificing clarity or transparency. Finally, we believe the adjustments we have granted in the *Eighth R&O* reflect our efforts to promote overall spectrum efficiency and, in particular, ensure the best possible DTV service to the public.

B. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

5. There were no comments filed that specifically addressed the rules and policies proposed in the IRFA.

C. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

6. The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the rules adopted herein.⁹ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small government jurisdiction.”¹⁰ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.¹¹ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹² The rules of this *Eighth R&O* will primarily affect full power television stations, as opposed to low power television

(Continued from previous page) _____
therefore only nine such requests are being considered. See Brief Comment of Fox Television Stations of Philadelphia, Inc., filed Oct. 18, 2007.

⁸ *DTV Periodic Report and Order*, 19 FCC Rcd at 18291, ¶ 31.

⁹ 5 U.S.C. § 604(a)(3).

¹⁰ *Id.* § 601(6).

¹¹ *Id.* § 601(3) (incorporating by reference the definition of “small business concern” in 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” 5 U.S.C. § 601(3).

¹² 15 U.S.C. § 632. Application of the statutory criteria of ‘non-dominance in its field of operation’ and ‘independence’ are sometimes difficult to accomplish in the context of broadcast television. Accordingly, the Commission’s statistical account of television stations may be over-inclusive.

stations and television translator stations. A description of such small entities, as well as an estimate of the number of such small entities, is provided below.

7. *Television Broadcasting.* The rules and policies adopted in this *Eighth R&O* apply to television broadcast licensees and permittees of television service. The SBA defines a television broadcast station as a small business if such station has no more than \$13.0 million in annual receipts.¹³ Business concerns included in this industry are those “primarily engaged in broadcasting images together with sound.”¹⁴ The Commission has estimated the number of licensed commercial television stations to be 1,376.¹⁵ According to Commission staff review of the BIA Financial Network, MAPro Television Database (“BIA”) on March 30, 2007, about 986 of an estimated 1,374 commercial television stations¹⁶ (or about 72 percent) have revenues of \$13.5 million or less and thus qualify as small entities under the SBA definition. The Commission has estimated the number of licensed NCE television stations to be 380.¹⁷ We note, however, that, in assessing whether a business concern qualifies as small under the above definition, business (control) affiliations¹⁸ must be included. Our estimate, therefore, likely overstates the number of small entities that might be affected by our action, because the revenue figure on which it is based does not include or aggregate revenues from affiliated companies. The Commission does not compile and otherwise does not have access to information on the revenue of NCE stations that would permit it to determine how many such stations would qualify as small entities.

8. In addition, an element of the definition of “small business” is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific television station is dominant in its field of operation. Accordingly, the estimate of small businesses to which rules may apply do not exclude any television station from the definition of a small business on this basis and are therefore over-inclusive to that extent. Also as noted, an additional element of the definition of “small business” is that the entity must be independently owned and operated. We note that it is difficult at times to assess these criteria in the context of media entities and our estimates of small businesses to which they apply may be over-inclusive to this extent.

9. *Class A TV, LPTV, and TV translator stations.* The rules and policies proposed in this *Eighth R&O* do not directly affect low power television stations, as the DTV Table to which changes are being proposed will finalize post-transition digital channels only for full power television stations.

¹³ See 13 C.F.R. § 121.201, NAICS Code 515120.

¹⁴ *Id.* This category description continues, “These establishments operate television broadcasting studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studios, from an affiliated network, or from external sources.” Separate census categories pertain to businesses primarily engaged in producing programming. See Motion Picture and Video Production, NAICS code 512110; Motion Picture and Video Distribution, NAICS Code 512120; Teleproduction and Other Post-Production Services, NAICS Code 512191; and Other Motion Picture and Video Industries, NAICS Code 512199.

¹⁵ See News Release, “Broadcast Station Totals as of December 31, 2006,” 2007 WL 221575 (dated Jan. 26, 2007) (“*Broadcast Station Totals*”); also available at <http://www.fcc.gov/mb/>.

¹⁶ We recognize that this total differs slightly from that contained in *Broadcast Station Totals*, *supra* note 15; however, we are using BIA’s estimate for purposes of this revenue comparison.

¹⁷ See *Broadcast Station Totals*, *supra* note 15.

¹⁸ “[Business concerns] are affiliates of each other when one concern controls or has the power to control the other or a third party or parties controls or has to power to control both.” 13 C.F.R. § 121.103(a)(1).

Nonetheless, as discussed in Section E, *infra*, low power television stations will also eventually transition from analog to digital technology and may be indirectly affected by the channel allotment decisions herein. The broadcast stations indirectly affected include licensees of Class A TV stations, low power television (LPTV) stations, and TV translator stations, as well as to potential licensees in these television services. The same SBA definition that applies to television broadcast licensees would apply to these stations. The SBA defines a television broadcast station as a small business if such station has no more than \$13.0 million in annual receipts. Currently, there are approximately 567 licensed Class A stations, 2,227 licensed LPTV stations, and 4,518 licensed TV translators. Given the nature of these services, we will presume that all of these licensees qualify as small entities under the SBA definition. We note, however, that under the SBA's definition, revenue of affiliates that are not LPTV stations should be aggregated with the LPTV station revenues in determining whether a concern is small. Our estimate may thus overstate the number of small entities since the revenue figure on which it is based does not include or aggregate revenues from non-LPTV affiliated companies. We do not have data on revenues of TV translator or TV booster stations, but virtually all of these entities are also likely to have revenues of less than \$13.0 million and thus may be categorized as small, except to the extent that revenues of affiliated non-translator or booster entities should be considered.

D. Description of Projected Reporting, Recordkeeping and other Compliance Requirements

10. The rules adopted in this *Eighth R&O* involve no changes to reporting, recordkeeping, or other compliance requirements beyond what is already required under the current regulations.

E. Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

11. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹⁹

12. The new post-transition DTV Table adopted in the *Seventh R&O* provides all eligible broadcast television stations – large and small alike – with channels for post-transition DTV operations. Small broadcasters, just like large ones, benefited from participating in the channel election process, and had an equal opportunity to review the proposed DTV Table and request modifications to it. Furthermore, no distinction was made between large and small licensees and permittees when determining which proposals to include in the *Eighth Further Notice* or which proposals to grant in the *Eighth R&O*. All licensees and permittees affected by the *Eighth R&O* had the opportunity to comment, and the Commission considered all comments, including those proposing alternative allotments for specific stations. The channel designations and parameters granted in the *Eighth R&O* are based almost entirely on elections by licensees and permittees. The transition procedures utilized in selecting final DTV allotments have been sufficiently transparent and flexible and were the most efficient means of minimizing the impact on small entities. The narrow scope of the Commission's authority did not permit for alternative procedures for selecting final DTV allotments, nor has the Commission ever utilized any alternative procedure for finalizing the DTV Table.

¹⁹ 5 U.S.C. § 603(c)(1)-(c)(4)

13. In addition, the new DTV Table to which the *Eighth R&O* grants modifications does not provide for channels for low power television stations. The Commission will address the digital transition for low power television (“LPTV”) stations in a separate proceeding. The statutory transition deadline established by Congress in 2006 – February 17, 2009 – applies only to full-power stations.²⁰ One of the Commission’s goals in this proceeding is to permit full power stations to finalize their post-transition facilities by this rapidly approaching deadline. The Commission previously determined that it has discretion under 47 U.S.C. § 336(f)(4) to set the date by which analog operations of stations in the low power and translator service must cease.²¹ The Commission has stated that the intent is to ensure that low power and translator stations not be required to prematurely convert to digital operation in a manner that could disrupt their analog service or, more importantly, that might cause them to cease operation.²² The Commission decided not to establish a fixed termination date for the low power digital television transition until it resolved the issues concerning the transition of full-power television stations.²³ The Commission has recognized that low power television stations are a valuable component of the nation’s television system and has stated its intention to facilitate, wherever possible, the digital transition of these stations.²⁴

F. Report to Congress

14. The Commission will send a copy of this *Eighth R&O*, including this FRFA, in a report to be sent to Congress pursuant to the Congressional Review Act.²⁵ In addition, the Commission will send a copy of this *Eighth R&O*, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of this *Eighth R&O* and FRFA (or summaries thereof) will also be published in the Federal Register.²⁶

²⁰ See Digital Television and Public Safety Act of 2005, which is Title III of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (codified at 47 U.S.C. §§ 309(j)(14) and 337(e)).

²¹ *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, MB Docket No. 03-185, Report and Order, 19 FCC Rcd 19331, 19336 ¶ 12 (2004) (“*LPTV DTV Report and Order*”).

²² *Id.* at 19337 ¶ 14.

²³ *Id.* at 19336 ¶ 19.

²⁴ *Id.* at 19332, ¶ 1.

²⁵ See 5 U.S.C. § 801(a)(1)(A).

²⁶ See *id.* § 604(b).